IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 563 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

MUKESHKUMAR KESHUMAL(PESHUMAL)SEVAKANI

Versus

STATE OF GUJARAT

Appearance:

MR BP MUNSHI for Petitioner No. 1

MR LR PUJARI AGP Respondents

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 02/05/2002

ORAL JUDGEMENT

Rule, service of which is waived by learned AGP, Mr.LR Pujari for the respondents.

By this revision, the petitioner has questioned the legality and validity of the order passed by the learned City Sessions Judge and the Appellate Authority, City Civil Court, Ahmedabad, in Criminal Appeal No.63 of 2000,

wherein, the petitioner has challenged the order of confiscation of goods valued at Rs.2,63,880/- by the respondent No.2, Director of Food and Civil Supplies, exercising the powers under the Essential Commodities Act, 1955 (for short 'the Act').

The order of respondent No.2 came to be confirmed by the appellate authority while rejecting the appeal filed by the petitioner. The only question which is required to be considered and adjudicated upon in this revision is as to whether the confiscation of goods (oil tins) worth Rs.2,63,880/- is a disproportionate punishment or penalty in view of the nature of violation of the provisions of the Act. There is no dispute about the fact that the petitioner has been doing business and dealing in selling of different kinds of oil, since many years and licence was not renewed which expired on 31st December, 1999. The Deputy Director and Civil Supplies Officers upon a raid conducted on 24th March, 2000 found following irregularities.

(i) License has not been renewed even though it expired as on 31st December, 1999;

(ii) On verification of the goods as per Stock Register, 41 Pamolin Oil Tins were in excess; one tin of Rapseed was less; four tins of Cottonseeds oil were in excess, and 12 Vegetable oil tins were in excess.

(iii) Goods had been sold to 9 parties from 18.10.1999 to 5.2.2000 but their license numbers were not stated in the bills.

Thus, it was, inter alia, noticed that the licence for dealing with whole sale oil business was not got renewed at the time of raid which, admittedly, expired on 31st December, 1999 and that licence numbers of the parties were not stated in the bills. The explanation tendered by the petitioner has been that on account of death of his mother, the licence could not be renewed and as regards omission of mentioning the licence numbers, the case of the petitioner was that it was a bonafide error. It was also stated that, other wise also, there was no requirement of mentioning such numbers upto the sale of 65 oil tins.

After having taken into consideration the submissions, nature and type of violations of the provisions of the Act, the confiscation order of respondent No.2 in respect of goods worth Rs.2,63,880/- and confirmed by the

appellate authority appears to be excessive in proportion to the irregularities committed by the petitioner. After having considered all the aspects of the case and the ultimate design and object of the provisions of power of seizure and confiscation of goods, it would be just and reasonable to modify the order of confiscation of the respondent No.2, confirmed in appeal in respect of goods worth Rs.2,63,880/- to Rs.35,000/-. The impugned order as well as the judgment of the appellate authority shall stand modified to the aforesaid extent.

The respondent authority is, therefore, directed to return the fixed deposit receipt deposited pursuant to the directions of this Court, on presentation of receipt of payment of Rs.35,000/- as directed hereinbefore, by chalan. The revision is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

(J.N.Bhatt, J.)

(vjn)